

Members

Rep. Jesse Villalpando, Chairperson
Rep. Ed Mahern
Rep. Ralph Ayres
Rep. Kathy Richardson
Sen. Richard Bray, Vice-Chairperson
Sen. David Ford
Sen. William Alexa
Sen. Timothy Lanane
Chief Justice Randall T. Shepard
Ernest Yelton
C. Joseph Anderson, Jr.



COMMISSION ON COURTS

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

George T. Angelone, Attorney for the
Commission
Susan Preble, Fiscal Analyst for the Commission

Authority: IC 33-1-15

MEETING MINUTES¹

Meeting Date: August 10, 1999
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Jesse Villalpando, Chairperson; Rep. Ed Mahern; Rep. Kathy Richardson; Sen. Richard Bray, Vice-Chairperson; Sen. David Ford; Sen. Timothy Lanane; Judge Ernest Yelton.

Members Absent: Chief Justice Randall T. Shepard; C. Joseph Anderson, Jr.; Sen. William Alexa; Rep. Ralph Ayres.

Representative Villalpando convened the meeting. He asked for testimony on the following study topic assigned to the Commission by the Legislative Council:

Study issues concerning the jurisdiction and procedures of the Indiana Tax Court.

The Commission heard testimony on this study topic from the following witnesses: Representative Vern Tincher; Timothy Brooks, Chairman of the State Board of Tax Commissioners; Attorney Larry Stroble, Barnes and Thornburg, representing the Council of the Taxation Section of the Indiana State Bar Association; and Judge Thomas Fischer, Judge of the Tax Court.

Rep. Tincher identified himself as the author of HB 1990 (1999) and HB 1991 (1999). (A

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly home page. The URL address of the General Assembly home page is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

copy of these bills along with other information related to Tax Court matters considered in the 1999 Session of the Indiana General Assembly, referred to as "Exhibit A", is on file with the Legislative Information Center.) He provided the following testimony. HB 1990 proposed changes both in the structure of the Tax Court and in the procedures related to the adjudication of property tax cases. HB 1991 dealt solely with property tax case procedures. Neither bill was enacted into law. His decision to introduce the bills was influenced by the following:

- (1) The magnitude of the current backlog of property tax appeals pending before the State Board of Tax Commissioners.
- (2) The number of high profile property tax cases that have been overturned by the Supreme Court.

He suggested several alternative ways in which the Tax Court might be restructured to address his concerns:

- (1) Abolish the Tax Court and return cases to their counties of venue.
- (2) Treat the Tax Court more like other trial courts and direct appeals from the Tax Court to the Court of Appeals, rather than to the Supreme Court.
- (3) Reestablish the Tax Court as a panel of three judges by rotating two judges from the Court of Appeals to the Tax Court to hear tax cases on a part-time basis.
- (4) Reestablish the Tax Court as a panel of three judges by rotating two circuit or superior court judges to the Tax Court to hear tax cases on a part-time basis.
- (5) Reestablish the Tax Court as a panel of three judges by appointing two additional judges to serve on the Tax Court on a full-time basis.

Rep. Tincher indicated that the procedural changes being recommended by the State Board of Tax Commissioners were acceptable to him

Chairman Brooks indicated that the State Board of Tax Commissioners was primarily interested in applying the Administrative Orders and Procedures Act (IC 4-21.5) to the adjudication of property tax appeals. He indicated that his staff could be better utilized if this procedural change were enacted. Under current law, appeals before the Tax Court involve an evidentiary hearing. Elimination of the evidentiary proceedings before the Tax Court would allow Tax Board personnel to allocate more time to reducing the backlog of proceedings pending before the Tax Board. In addition, the change would increase the quality of presentations made to the Tax Board by the affected tax officials. Although local tax officials have become more vigorous in defending their positions, there have been a number of cases in which the Tax Board obtained an inadequate explanation of the basis for a local decision. When the matter was appealed to the Tax Court, the Tax Board ended up with the responsibility of defending a position on which the Tax Board had not been fully briefed. The Tax Board believes that it has lost a number of appeals that very possibly could have been won if a more vigorous defense had been presented by the affected local taxing officials.

Chairman Brooks indicated that some of the provisions of IC 4-21.5 are inappropriate for the adjudication of property tax matters. HB 1990 and HB 1991 identified some of these provisions. As a result, the changes being suggested by the Tax Board might be accomplished either by applying IC 4-21.5 to the Tax Board with certain exemptions or by crafting a separate procedure in IC 6-1.1 and IC 33 that is modeled on the procedures in IC 4-21.5. Regardless of the drafting approach taken by the Commission, the Tax Board recommends that the draft include the following essential changes:

- (1) Require Tax Court review of Tax Board decisions to be based on the

record developed in the proceedings before the Board.

(2) Allow no witnesses, including Board hearing officers, to testify in appeals before the Tax Court.

(3) Place the burden of proof that a county determination is in error on the taxpayer.

In response to a question from the Commission, Chairman Brooks indicated that the Tax Board does not have a recommendation related to the structural proposals suggested by Rep. Tincher. However, he suggested that the proposal to add two full-time judges to the Tax Court is likely to generate the most consensus.

Rep. Villalpando asked Judge Fischer to respond to the proposals suggested by Rep. Tincher and Chairman Brooks. Judge Fischer indicated that he found the proposal to add two full-time judges to the Tax Court to be the most acceptable of the structural changes suggested by Rep. Tincher. He indicated that, in general, he saw no problem with the procedural proposals suggested by Chairman Brooks. He suggested that a number of technical details need to be addressed if procedural changes are made. The issues include deciding the manner in which the Tax Board will preserve a record of site visits made by a hearing officer and establishing a more effective method of recording oral testimony received by the Tax Board. Judge Fischer also noted that concern over the reversal rate of Tax Court decisions may not be justified. If the percentage of Tax Court cases reversed by the Supreme Court to the percentage of Court of Appeals cases reversed by the Supreme Court reveals that the Tax Court reversal rate is in line with other appellate courts.

Mr. Stroble provided the Commission with a history of the Tax Court and an analysis of HB 1990 and HB 1991. (A copy of background document distributed by Mr. Stroble, referred to as "Exhibit B", is on file with the Legislative Information Center.) He suggested that the creation of the Tax Court has successfully eliminated the deficiencies in the system that existed prior to its creation. By:

(1) funneling all tax cases to a single judge, the Indiana General Assembly has ensured that decisions would be made by a person with tax expertise and experience;

(2) giving the Tax Court statewide jurisdiction over tax cases, the Indiana General Assembly has made it possible for a body of consistent, uniform, and binding tax law to develop; and

(3) directing appeals to the Supreme Court, the Indiana General Assembly has shortened the time required for a tax law ruling to become final and eliminated conflicts between different panels of the Court of Appeals.

Mr. Stroble stated that the Council of the Taxation Section of the State Bar Association is unaware of any compelling reason to justify the structural changes proposed in HB 1190 and HB 1191 or the procedural change proposed in HB 1191 to eliminate the direct appeal of Tax Court decisions to the Supreme Court. He noted that the Supreme Court has found no error in the bulk of the Tax Court's rulings. Further, the proposals would expose Indiana citizens to many of the deficiencies that were eliminated by the current law. However, he indicated that the Taxation Section was not opposed in concept to the procedural changes suggested by Chairman Brooks.

At the conclusion of testimony, Representative Villalpando requested that Mr. Brooks and Judge Fischer work with the staff attorney for the Commission to produce draft legislation that would address the structural and procedural concerns raised in the testimony.

Representative Villalpando distributed a copy of the recommendations made by the Commission in 1998 to the members. (A copy of the recommendations, referred to as

"Exhibit C", is on file with the Legislative Information Center.) He asked the members whether any of the recommendations that were not enacted in the 1999 Session, other than recommendations for specific courts or magistrates, should be resubmitted to the General Assembly in the 2000 Session with a recommendation from the Commission. After identifying each recommendation that was not enacted by the General Assembly, the Commission unanimously voted by a show of hands to recommend and resubmit the following proposals to the General Assembly:

(1) Payment of juvenile magistrates. See PD 3346 (1999).

(2) Disclosure of jury lists. See PD 3432 (1999).

Representative Villalpando indicated that he sent a letter to all legislators asking them to respond by September 1 with any proposals for new courts, new magistrate positions, or other matters within the jurisdiction of the Commission. He indicated that the Commission will review these proposals, beginning at the next meeting. The Commission also received the following study topic suggestions:

(1) From Judge Ernest Yelton, a request to study issues related to giving all courts in a county the same general jurisdiction and allowing the courts in a county the option of determining how the caseload would be allocated among the courts in that county.

(2) From Travis Worl, representing the Association of Indiana Counties, a request to study a joint proposal of the Indiana Judges Association and the Association of Indiana Counties, Inc. concerning the payment of court employees.

The Commission set the next meeting for September 17 at 10:00 a.m. Representative Villalpando then adjourned the meeting.